ANDA 75-112 May 31, 2001

Apotex Corp
Attention: Marcy Macdonald
U.S. Agent for: Torpharm
50 Lakeview Parkway, Suite #127
Vernon Hills, Illinois 60061

Dear Madam:

This is in reference to your abbreviated new drug application dated April 9, 1997, submitted pursuant to Section 505(j) of the Federal Food, Drug, and Cosmetic Act (Act), for Divalproex Sodium Delayed-release Tablets USP, equivalent to 125 mg, 250 mg, and 500 mg valproic acid.

Reference is also made to your amendments dated February 9, 1998; August 17, 1999; October 12, and December 19, 2000; and February 9, March 19, and April 19, 2001.

We have completed the review of this abbreviated application and have concluded that, based upon the information you have presented to date, the drug is safe and effective for use as recommended in the submitted labeling. Therefore, the application is **tentatively approved**. This determination is based upon information available to the Agency at this time (i.e., information in your application and the status of current good manufacturing practices (CGMPs) of the facilities used in the manufacture and testing of the drug product. The determination is subject to change on the basis of new information that may come to our attention. This letter does not address notice issues related to the 180-day exclusivity provisions under section 505(j)(5)(B)(iv) of the Act.

The listed drug product referenced in your application, Depakote Delayed-release Tablets of Abbott Laboratories, is subject to periods of patent protection which expire on January 29, 2008, (U.S. Patent No. 4,988,731 and U.S. Patent No. 5,212,326). Your application contains patent certifications to each of these patents under Section

505j)(2)(A)(vii)(IV) of the Act stating that your manufacture, use or sale of the drug product will not infringe on either patent. Section 505(j)(5)(B)(iii) of the Act provides that approval of an abbreviated application shall be made effective immediately unless an action is brought prior to the expiration of forty-five (45) days from the date the notice provided under paragraph (2)(B)(i) is received. You have notified the agency that Torpharm complied with the requirements of Section 505(j)(2)(B) of the act and that as a result of this action, Torpharm was sued for patent infringement in the United States District Court for the Northern District of Illinois (Abbott Laboratories vs. Torpharm, Apotex, Inc. and Apotex Corp, Civil Action No. 97 C 7515). You have informed the agency that the court granted Summary Judgement in Abbott's favor finding that Abbott's patents relating to the drug product are valid and infringed by Torpharm's drug product. Furthermore, you have declined to modify or change your Paragraph IV Certification to the patents based upon your filing of a motion before the court requesting that the presiding judge vacate his Order of March 29, 2001 (Summary Judgement); and you have noted your intent to file an immediate appeal to the Federal Circuit Court of Appeals should the district court not rule in your favor. Therefore, final approval cannot be granted until:

a. the date of court decision [505(j)(5)(B)(iii) (I), (II), or (III)], which has been interpreted by the Agency to mean the date of the final order or judgement of that court from which no appeal can be or has been taken; or,

b. both patents have expired; and

c. the Agency is assured there is no new information that would affect whether final approval should be granted.

Because the Agency is granting a tentative approval for this application, when you believe that your application may be considered for final approval, you must amend your application to notify the Agency of the circumstances which have occurred that may affect the effective date of final approval. Your amendment must provide:

1. A copy of a final order or judgement from which no appeal may be taken, a settlement agreement between the parties, or a licensing agreement between you and the patent holder, or any other relevant information, and

2. a. updated information related to labeling or chemistry, manufacturing and controls data, or any other change in the conditions outlined in this abbreviated application, or

   b. a statement that no such changes have been made to the application since the date of tentative approval.

Any changes in the conditions outlined in this abbreviated application and the status of the manufacturing and testing facilities' compliance with current good manufacturing procedures are subject to Agency review before final approval of the application will be made.

In addition to, or instead of, the amendments referred to above, the Agency may, at any time prior to the final date of approval, request that you submit amendments containing the information requested above.

Failure to submit either or both amendments may result in rescission of this tentative approval determination, or delay in issuance of the final approval letter.

The drug product that is the subject of this abbreviated application may not be marketed without final Agency approval under section 505 of the Act. The introduction or delivery for introduction into interstate commerce of this drug before the effective final approval date is prohibited under section 501 of the Act. Also, until the Agency issues the final approval letter, this drug product will not be listed in the Agency's "Approved Drug Products with Therapeutic Equivalence Evaluations" list.

The amendment should be designated as a MINOR AMENDMENT in your cover letter. Before you submit the amendment, please contact Jeen Min, Project Manager, at 301-827-5849, for further instructions.

Sincerely yours,

Gary Buehler
Acting Director
Office of Generic Drugs
Center for Drug Evaluation and Research